

1 **LENARD E. SCHWARTZER**  
2850 So. Jones Blvd., Ste. 1  
2 Las Vegas, NV 89146  
(702) 307-2022

3 Trustee

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8 **UNITED STATES BANKRUPTCY COURT**  
9 **DISTRICT OF NEVADA**

10 MICHAEL F. EGAN, III,

) Case No.: BK-S-15-16493-ABL

) Chapter 7

) **TRUSTEE'S MOTION FOR ORDER**  
) **APPROVING COMPROMISE OF CLAIMS**  
) **OF THE BANKRUPTCY ESTATE AGAINST**  
) **JEFFREY HERMAN**

11  
12  
13  
14 Debtor.

) **Date: May 9, 2016**

) **Time: 11:00 a.m.**

) **Place: Foley Building, 3<sup>rd</sup> Floor**

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17 LENARD E. SCHWARTZER, Chapter 7 Trustee (the "Trustee"), moves this Court to  
18 approve the proposed Settlement and Compromise of Claims of the Bankruptcy Estate against  
19 Jeffrey Herman, Esq. ("Herman"). Subject to Bankruptcy Court approval, the Trustee has  
20 agreed to settlement of these claims in the exercise of his reasonable business judgment.  
21 Pursuant to the settlement, if approved by the Bankruptcy Court, Herman will pay the  
22 Bankruptcy Estate the amount of \$5,000.00 and will waive any claims against the Estate,  
23 including his filed claim in the amount of \$330,297.00, in exchange for the Trustee's general  
24

1 release of claims against Herman. A mutual general release setting forth this agreement is  
2 attached hereto as Exhibit "A".

3 **Facts Relevant to Motion**

4 1. The Debtor, Michael F. Egan, III (the "Debtor" or "Egan") filed a petition under  
5 Chapter 7 of the Bankruptcy Code on November 18, 2015. The Schedule B filed by the Debtor  
6 lists as personal property contingent and unliquidated claims against Herman for "malpractice".

7 2. Herman and his law firm, Herman Law, represented Egan with regard to his  
8 allegations of child sexual abuse. In particular, Egan alleged that he was sexually abused in the  
9 1990's as a child by entertainment industry executives in a Hollywood sex ring.

10 3. Egan more recently has alleged that Herman, who also represented other child  
11 victims of the sex ring, failed to adequately represent Egan's interests vis-à-vis the other client  
12 victims. Herman considers Egan's claims to be entirely frivolous. In fact, Herman states that he  
13 withdrew from his representation of Egan after discovering that Egan had misled him and made  
14 misrepresentations, which included material facts that led to Herman's agreement to represent  
15 Egan.

16 4. Herman states that the Debtor's misrepresentations included the following:

- 17 • Before Herman filed lawsuits on his behalf, the Debtor disclosed to  
18 Herman that he signed a document at the request of one of the alleged  
19 perpetrators. He informed Herman that he did not have a copy of this  
20 document, representing: "I am not sure exactly what it was but I believe  
21 it was a confidentiality agreement within that document as I recall it  
22 stated that I would not expose him of [sic] any of his abuse against me."  
23 See text message attached as "Exhibit "B". After filing the lawsuit,

1 Herman obtained a copy of the declaration signed and sworn by the  
2 Debtor, which represented something entirely different: that the alleged  
3 perpetrator had “. . . never been present when I was involved in any type  
4 of sexual conduct, never harassed me, never made sexually suggestive  
5 remarks to me and never acted improperly around me or toward me, on a  
6 personal or professional level.” See Exhibit “C”.

- 7 • The Debtor represented that he was sexually abused in 1999 in a private  
8 plane excursion to Hawaii, where he stayed at the Paul Mitchell estate  
9 with certain Hollywood industry executives. He failed to advise Herman,  
10 however, that in sworn deposition testimony in 2003 he stated that he  
11 never left the continental United States. Unbeknownst to Herman, the  
12 Debtor had previously been to see another lawyer to whom he disclosed  
13 the 2003 testimony. That lawyer, as a result, declined to represent the  
14 Debtor. In subsequently speaking to Herman, the Debtor failed to  
15 disclose the 2003 testimony, apparently in order to induce Herman to take  
16 his case. With this information concealed, Herman filed lawsuits in  
17 Federal court in Hawaii on behalf of the Debtor against the perpetrators  
18 of sexual abuse in Hawaii as alleged by the Debtor. Approximately one  
19 month after filing, Herman was first provided with a copy of the Debtor’s  
20 2003 deposition transcript.

- 21 • After conferences with the Debtor and with the Debtor’s express consent,  
22 Herman dismissed the Hawaii cases, intending to pursue similar claims in  
23 California. The Debtor later misrepresented that he did not authorize this  
24

1 strategy; yet on June 25, 2014, the Debtor send a text message to Herman  
2 stating approvingly that “it was a legal strategy to move to California.”  
3 See Exhibit “D”.

- 4 • The Debtor misrepresented that he had photographs and postcards  
5 proving his presence in Hawaii during the abuse. Despite repeated  
6 promises, he never produced such evidence.

7 5. Herman subsequently withdrew as counsel for the Debtor on his sexual abuse  
8 claims based on this misleading conduct and misrepresentations. Herman, his local counsel, and  
9 the Debtor were sued by two of the alleged perpetrators in separate cases filed in Federal court  
10 in Hawaii, alleging malicious prosecution and abuse of process. It is Herman’s position that the  
11 Debtor fraudulently induced him to file the Hawaii lawsuits, causing him substantial damages  
12 relating to defense of those lawsuits.

13 6. Based on the foregoing, the value of the Debtor’s claim, if any, is nominal and  
14 for nuisance purposes. The agreement of Herman to pay \$5,000.00 and release any claims  
15 against the Estate, including his unsecured claim in the amount of \$330, 297.00, in exchange for  
16 the full and complete general release of the Trustee’s claims against him, without having to bear  
17 the costs of litigation, is thus beneficial to the Estate and reasonable.

### 18 Argument

#### 19 A. Legal Standard

20 “On motion . . . and after notice and a hearing, the court may approve a compromise or  
21 settlement.” Fed. R. Bankr. P. 9019(a). “The bankruptcy court has great latitude in approving  
22 compromise agreements.” Woodson v. Fireman’s Fund Ins. Co. (In re Woodson), 839 F.2d 610,  
23 620 (9th Cir. 1988). “The purpose of a compromise agreement is to allow the trustee and the  
24

creditors to avoid the expenses and burdens associated with litigating sharply contested and dubious claims.” Martin v. Kane (In re A & C Properties), 784 F.2d 1377, 1380-81 (9th Cir. 1986). The Ninth Circuit has identified the following factors for consideration in determining whether a proposed settlement agreement is reasonable, fair and equitable:

(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Id. at 1381 (citations omitted).

The lack of probability of success in litigation, in particular, strongly supports settlement of the claims against Herman. The fairness and reasonableness of the proposed settlement is demonstrated here, especially considering the Debtor’s fraudulent inducement to Herman and his misrepresentations.

### **Conclusion**

It is therefore respectfully requested that the Court approve the proposed settlement with Herman, and authorize execution and delivery of a mutual general release in the form attached hereto as Exhibit “A”.

Dated: April 11, 2016



\_\_\_\_\_  
Lenard E. Schwartz, Trustee

### **DECLARATION OF TRUSTEE**

I declare, under penalty of perjury, that the foregoing is true and correct, to the best of my knowledge, information and belief.

Dated: April 11, 2016



\_\_\_\_\_  
LENARD E. SCHWARTZER

# **EXHIBIT A**

**MUTUAL GENERAL RELEASE**

I, **LENARD E. SCHWARTZER**, as **Chapter 7 Trustee for the Bankruptcy Estate of Michael F. Egan, III ("TRUSTEE")**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby remise, release, acquit, satisfy, and forever discharge **JEFFREY HERMAN, ESQUIRE, HERMAN LAW**, and all of their attorneys, employees, agents, including any all of their representatives, directors and officers, successors, predecessors and affiliates, past and present (collectively the "Released Parties"), of and from any and all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, rights, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, losses, derivative claims, attorneys' fees, court costs, expenses, claims and demands whatsoever, in law or in equity, which **TRUSTEE**, or anyone claiming by, through or under **TRUSTEE**, ever had, now has, or which any personal representative, successor, heir or assign or any, can, shall, or may have for, upon, or by reason of any matter, cause or thing whatsoever, from the beginning of the world through the date of execution of this Release, including without limitation, claims of Michael F. Egan, III that are property of the Bankruptcy Estate created by or through the filing of case no. BK-S 15-16493 ABL, United States Bankruptcy Court, District of Nevada.

I, **JEFFREY HERMAN, ESQUIRE** and **HERMAN LAW**, do hereby remise, release, acquit, satisfy and forever discharge **TRUSTEE** from any and all claims, actions, causes of action, suits, debts, attorneys' fees, costs and demands whatsoever, in law or equity, which they or anyone claiming by, through or under them, ever had, now has, or which any successor, heir or assign can, shall or may have for, upon, or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the date of these presents, including without limitation, the waiver, release and discharge of any and all rights to payment under the proof of claim they filed in the Bankruptcy Estate of Michael F. Egan III, in the amount of \$330,297.00.

This is a full, complete and general release. This release may be executed in counterparts.

IN WITNESS WHEREOF, I have hereunto executed this General Release this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Lenard E. Schwartzer, Chapter 7 Trustee for  
the Bankruptcy Estate of Michael F. Egan, III

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared Lenard E. Schwartzer, to me known to be the person described in and who executed the foregoing instrument and who acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
Personally known to me; or \_\_\_\_\_ Produced Identification: \_\_\_\_\_

**EXHIBIT "A"**

MUTUAL RELEASE

Page 2 of 2

IN WITNESS WHEREOF, I have hereunto executed this General Release this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Jeffrey M. Herman on his own behalf and as  
President of Herman Law

STATE OF )  
COUNTY OF )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared Jeffrey M. Herman, to me known to be the person described in and who executed the foregoing instrument and who acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_ Personally known to me; or \_\_\_\_\_ Produced Identification: \_\_\_\_\_

# **EXHIBIT B**

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3:57 PM

↑ 72%

◀ Messages

Jeff

Details

redacted

redacted

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redacted

redacted

redacted Also on

redacted he

prepared a document, I  
am not sure exactly what  
it was but I believe it was  
a confidentiality  
agreement within that  
document as I recall it  
stated that I would not  
expose him of any of his  
abuse against me. I did  
sign that document. I  
don't recall the date but  
it was years ago (early  
2000's) Mike



# **EXHIBIT C**

**DECLARATION OF MIKE EGAN**

(Page 2 of 2)

redacted has never been present when I was involved in any type of sexual conduct, never harassed me, never made sexually suggestive remarks to me, and never acted improperly around me or toward me, on a personal or professional level.

I declare under penalty of perjury under the laws of the State of California that this declaration is true and correct.


Executed this 6<sup>th</sup> day of November 2009, at West Hollywood, CA

  
MIKE EGAN

# **EXHIBIT D**

●●○○○ AT&T LTE

1:13 PM

92% 

← Messages (1)

Mike

Details

Wed, Jun 25, 6:23 PM

Did you issue out a  
press release about  
redacted talking about  
how I passed a  
polygraph and so forth  
but it was a legal  
strategy to move to  
California or did you  
just talk to them. redacted

redacted  
redacted  
redacted

Fri, Jun 27, 11:04 AM

redacted

Tue, Jul 1, 4:58 PM



Text Message

Send